

**REMARKS**

Applicant submits this Amendment in response to the non-final Office Action dated December 10, 2009. Reconsideration of the subject application as amended herein is respectfully requested.

In the Office Action, the Examiner has once again taken the position that the device described in the prior art Owens reference teaches "all the material limitations" of claims 1, 2, 8, 11 and 18-20, and therefore anticipates those claims under 35 U.S.C. § 102(b), and further that the Owens reference renders the remaining elected claims, that is, claims 3, 9, 10, 12-17 and 22, obvious under 35 U.S.C. §103. The Examiner contends that the catalytic converter device of Owens, although meant for a different use than applicant's invention, has a structure that is nevertheless *capable* of performing the use intended by applicant.

The Examiner is thanked for the courtesies extended to applicant's representative, who met with the Examiner on May 19, 2010 for a discussion of this case. As stated in the Examiner's written Interview Summary mailed May 20, 2010, although certain claim amendments were proposed during that interview, no agreement

was reached. Also during that interview, the prior art (Owens U.S. Patent No. 6,129,774) was discussed, but the Examiner reiterated her prior position that if the catalytic converter device of Owens were to be situated in (that is, if it were to be "thrown" into) a stove or fireplace, it would operate in the same manner as applicant's claimed invention so as to generate soot-removing vapors that would clean the flue. However, as explained in the accompanying Declaration, signed by inventor Peter Leonard Hutchison on June 5, 2010 and submitted herewith under the provisions of 37 C.F.R. §1.132, this is most definitely not the case.

Specifically, as stated in paragraph 4 of the Hutchison Declaration, Owens specifies that the walls of the container of his catalytic converter device must be made of aluminum, since according to Owens, aluminum is one of the metals that forms the catalyst with which the fossil fuel must come into contact (see Owens, column 2, lines 30-38 and 51-53). However, since the melting point of aluminum is far below the temperature found in the fire of a wood burning stove or heater, if the Owens catalytic converter device were hypothetically to be thrown into such a stove or heater, it would not operate in the same manner as applicant's claimed device. Rather, the aluminum of the container would melt, causing its two open ends to collapse and seal. At the same time, the other metals inside the Owens device would melt and then begin to vaporize,

but being trapped by the melted aluminum of the container, they would not escape but would instead cause pressure to build within the melted mass, resulting in an explosive and dangerous situation (Hutchison Declaration, ¶ 5).

Thus, the Owens device would not function in the environment of applicant's device and would be unworkable, because it would not provide controlled release of soot removing vapors, as does applicant's device. Applicant's device provides such controlled release because its containment vessel is formed of a material that is resistant to the heat generated in that environment, that is, a material that has a melting point sufficient to withstand that heat, and to remain solid while continuing to provide containment despite that heat (Hutchison Declaration, ¶ 6).

Accordingly, applicant has amended each of independent claims 1, 19 and 20 so as to add the limitation that the material from which the containment vessel is formed has a melting point that is sufficiently high so as to withstand the heat of the fire that is burning in the stove or fireplace. As amended, these claims cannot be anticipated by Owens, since the container of the Owens device is not fabricated of such a material.

Furthermore, applicant's amended independent claims would not be obvious to

one of ordinary skill in the art in light of Owens, because the average worker would be dissuaded from modifying the Owens catalytic converter by fabricating the walls of its container from a heat resistant material, so as to allow it to withstand the heat of a fire in a wood burning stove or fireplace, since that is not the environment in which the Owens catalyst was intended to operate or would have any effect.

Based upon the foregoing, it is respectfully submitted that the subject invention is patentable over the prior art, and that therefore the claims, as presently amended, should be allowed.

The Commissioner is requested to construe this paper as including a retroactive petition for a three-month extension of time in which to file a response to the outstanding Office Action, and accordingly, the official fee of \$555.00 as prescribed for that extension by 37 C.F.R. §1.17(a)(3), as amended, in the case of a small entity, is submitted herewith. The Commissioner is authorized to charge any additional extension fees which may be required, or to credit any overpayment, to the Deposit Account of undersigned counsel, No. 07-1730.

Applicant has addressed herein certain points raised by the Examiner in the

Office Action, and applicant has amended the claims in an earnest effort to place this application in condition for allowance. Accordingly, it is respectfully submitted that the subject application is now in condition for allowance, and further favorable action is earnestly solicited. The Examiner is invited to contact the undersigned attorney by telephone if it will advance the prosecution of this case.

Respectfully submitted,

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